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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MARY JO CASTILLO,

Defendant and Appellant.

B290054

(Los Angeles County  
Super. Ct. No. YA093666)

APPEAL from postjudgment orders of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Appeal from order revoking probation dismissed; appeal from order denying motion to set aside and reconsider affirmed.

Marks & Brooklier and Donald B. Marks for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Mary Jo Castillo contends the trial court erred in revoking her probation and subsequently denying her motion to set aside and reconsider that order. We dismiss as untimely her appeal from the order revoking probation and otherwise affirm.

## FACTUAL AND PROCEDURAL HISTORY

### A. *The Trial Court Revokes Castillo's Probation*

In March 2016 Castillo pleaded no contest to money laundering (Pen. Code, § 186.10, subd. (a))<sup>1</sup> for her role in a scheme to defraud an automobile broker that resulted in a \$2 million loss to the broker. The trial court sentenced Castillo to three years in prison, suspended execution of the sentence, and placed Castillo on probation for three years. Among the terms and conditions of probation were that Castillo pay restitution to the victim, obey all court orders and all rules and regulations of the probation department, and seek and maintain employment as approved by the probation officer.

In September 2017 the parties stipulated to further orders clarifying the terms and conditions relating to restitution, including that Castillo was jointly and severally liable with two co-defendants for the \$2 million loss to the victim and that she would make regular payments on that obligation to the probation department. To determine Castillo's ability to pay restitution, the trial court ordered her to meet with the probation department financial evaluator and the revenue enhancement unit and to bring with her documentation relating to her finances, including tax returns from 2012 through the present, a list of all assets and

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

liabilities, and bank account records. The court stated: “The point is to be able to track her finances and loss of the victim . . . . If it becomes apparent that there has been an effort to cover that up, or an effort not to share information, that will constitute a violation” of the terms and conditions of probation.

As of January 2018, when the trial court held a hearing on her ability to pay restitution, Castillo was making monthly payments of \$25. Based on information she provided the financial evaluator, however, the evaluator had determined her monthly disposable income was \$18,824 and recommended monthly restitution payments of \$8,000. At the hearing (and at another hearing shortly after), the court expressed its dissatisfaction with the amount of Castillo’s payments, her failure to provide the financial evaluator with the documentation the court had ordered her to provide, and her lack of cooperation with the financial evaluator. At one point the court remarked it had “never seen a report like this where the financial evaluator states that there [were] so many failures to provide documentation.” The court scheduled a probation violation hearing for February 14, 2018.

At that hearing the financial evaluator testified Castillo did not bring any financial documents to their first meeting, did not bring to subsequent meetings many of the documents requested by the evaluator, and provided information that appeared to be false. The court found Castillo violated the terms of her probation. The court stated: “The evaluator gave one of the most scathing reports I have seen an evaluator give . . . , saying essentially [Castillo] hasn’t turned over even close to the information they need to provide an informed report.” Citing evidence of Castillo’s lack of credibility in describing her efforts to obtain employment, the court added, “It just looks like what it is,

an attempt not to cooperate.” The court ordered Castillo to serve the previously suspended three-year prison term.

B. *The Trial Court Denies Castillo’s Motion To Set Aside and Reconsider the Order Revoking Probation*

In March 2018 Castillo filed a motion to set aside the order revoking probation under section 1203.2, subdivision (e). She argued there was good cause to set aside the order because she could not make monthly restitution payments of \$8,000 as recommended by the financial evaluator. She also argued she did not produce the financial documents the court had ordered because her husband had “objected to such production of documents” and refused to cooperate in the court proceedings. “In that regard,” she stated, she was now willing to provide their 2016 joint personal income tax return, which she previously withheld, and her husband was willing to provide his 2016 corporate income tax return. Finally, she argued the evaluator’s evaluation of her disposable income was “incomplete.” The motion also requested “reconsideration of” the revocation order, but did not provide any authority or argument to support that request.

At a hearing on March 28, 2018 the trial court denied the motion. The court stated its decision to revoke probation “wasn’t based on payments being adequate or even the amount of payments,” but on Castillo’s “refusing to cooperate with the financial evaluator.” “It is not a debtor’s issue,” the court emphasized, “it’s a cooperation issue.” Regarding the 2016 personal income tax return, the court observed that it was a joint return, that Castillo therefore had the power and obligation to turn it over despite her husband’s objection, and that Castillo had “made a decision . . . to go against the court and with the husband.” The court also rejected Castillo’s argument that her

husband's previous refusal to cooperate in providing financial information was a "new fact" warranting reconsideration, observing that the financial evaluator had testified to his lack of cooperation. "I don't see good cause," the court stated, "and I don't see a ground for reconsideration because there's no new facts or . . . new law that weren't available at the time." On May 4, 2018 Castillo filed her notice of appeal, which states she is appealing "from the order revoking probation on March 28, 2018."

## DISCUSSION

### A. *Castillo's Appeal of the Order Revoking Probation Is Untimely*

The trial court revoked Castillo's probation on February 14, 2018. That order was appealable (see § 1237, subd. (b); *People v. Robinson* (1954) 43 Cal.2d 143, 145 ["an order revoking probation made *after* entry of judgment is appealable"]), but the notice of appeal from it, filed May 4, 2018, was untimely. (See Cal. Rules of Court, rule 8.308(a) ["a notice of appeal . . . must be filed within 60 days after the rendition of the judgment or the making of the order being appealed"].) Therefore, we dismiss as untimely Castillo's appeal of the trial court's order revoking probation.

### B. *The Trial Court Did Not Err in Denying Castillo's Motion To Set Aside and Reconsider the Order Revoking Probation*

As a preliminary matter, we have some concern whether the notice of appeal, which purports to appeal "from the order revoking probation on March 28, 2018," was sufficient to appeal the trial court's order denying Castillo's motion to set aside and reconsider the order revoking probation. We also have some

concern whether the order denying Castillo's motion was appealable. (Compare *People v. Buccheri* (1969) 2 Cal.App.3d 842, 845 ["an order refusing to set aside an order revoking probation [is not] appealable"] and *People v. Ross* (1962) 206 Cal.App.2d 542, 543 [order denying motion to reconsider order denying probation is not appealable] with *People v. Totari* (2002) 28 Cal.4th 876, 886-887 (*Totari*) [unlike an order denying a nonstatutory postjudgment motion to vacate, an order denying a motion to vacate under section 1016.5 is appealable because, "[o]nce the Legislature has determined that a noncitizen defendant has a substantial right to be given complete advisements and affords defendant a means to obtain relief by way of a *statutory* postjudgment motion to vacate, the 'no second appeal' rule loses its urgency and a denial order qualifies as an 'order made after judgment, affecting the substantial rights of the party'"] and *Teal v. Superior Court* (2014) 60 Cal.4th 595, 600 [citing *Totari* in holding an order denying a petition under section 1170.126, which "creates a substantial right to be resentenced and provides a remedy by way of a statutory postjudgment motion," is appealable].)<sup>2</sup>

In any event, the trial court did not err in denying Castillo's motion. Section 1203.2, subdivision (e), authorizes the trial court to set aside "for good cause" an order revoking probation, and we review the court's "good cause" determination

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<sup>2</sup> The People, citing section 1237, subdivision (b), suggest the order denying Castillo's motion was appealable: "The filing of appellant's post-judgment motion to set aside the probation revocation order and for reconsideration did not extend the time to appeal. The trial court's post-judgment order denying the motion was separately appealable and required a separate notice of appeal."

for abuse of discretion. (See *People v. Drew* (2017) 16 Cal.App.5th 253, 257 [“our review of the . . . ‘good cause’ determination employs the familiar ‘abuse of discretion’ standard”].) Castillo argues there was good cause to set aside the revocation order because she (a) “did not have the ability to pay” restitution (of any amount, presumably) and (b) “did cooperate with the financial evaluator in furnishing the required documentation that was in her possession.” As the trial court made abundantly clear, however, it did not revoke Castillo’s probation for her inability to pay, but for her failure to cooperate with the court and the financial evaluator. And the testimony and report of the evaluator amply supported the court’s determination that Castillo was not cooperating.

Castillo also argues the court erred in denying her request to reconsider the revocation order. But in the trial court Castillo cited no authority for such a request, and she cites none now. And although she argues she presented the trial court with “new facts” warranting reconsideration of the revocation order—for example, “documents in the possession of her husband, i.e., tax returns, were now available for the court’s review”—these amounted to nothing more than an announcement Castillo was now ready to cooperate. That is not the sort of “new fact” that warrants reconsideration. (Cf. *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 833 [party moving for reconsideration under Code of Civil Procedure section 1008 must “show diligence with a satisfactory explanation for not presenting the new or different information earlier”].) The trial court did not abuse its discretion. (See *People v. Alexander* (2010) 49 Cal.4th 846, 871 [reviewing denial of a motion for reconsideration for abuse of discretion].)

## **DISPOSITION**

The appeal from the trial court's order revoking probation is dismissed as untimely. The order denying Castillo's motion to set aside and reconsider the order revoking probation is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.